DANIEL RACETTE,

      Plaintiff,

v.   Civ. No. 16-277 GJF

NANCY A. BERRYHILL, *Acting*
Commissioner of the Social Security
Administration,

      Defendant.

AMENDED ORDER GRANTING ATTORNEY FEES

This matter is before the Court upon Defendant's Stipulated Motion for Relief from Order Granting Attorney Fees ("Motion"), filed on August 13, 2018. ECF No. 42. The Court's previous Order Granting Attorney Fees ("Order") [ECF No. 41] ordered Defendant to pay Plaintiff $12,500.00 in fees, which is incorrect. [1] Defendant asks the Court to amend its Order to require Defendant to pay Plaintiff $12,250.00 in fees, which was the amount originally requested. *See* ECF No. 40 at 1. The Court, having reviewed the Motion and the Order, and noting the concurrence of the parties, finds the Motion to be well-taken and **GRANTS** it.

    IT IS THEREFORE ORDERED:

    1.   Defendant will pay Plaintiff a total of $12,250.00 in fees and $905.00 in costs pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412 *et seq.* This amount is payable to Plaintiff, not directly to his counsel. *See Astrue v. Ratliff*, 560 U.S. 586, 591-93 (2010). Plaintiff's payment will be remitted to the office of his attorney, Francesca J. MacDowell. Costs shall be paid from the Secretary of the Treasury's Judgment Fund. *See* 28 U.S.C. § 2412(c)(1).

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[1] The Court regrets its inadvertent error.

2.   Defendant's payment of this amount is without prejudice to Plaintiff's counsel's right to seek attorney fees under section 406(b) of the Social Security Act, 42 U.S.C. § 406(b), subject to the offset provisions of the EAJA.

3.   If Plaintiff's counsel receives attorney fees under both the EAJA and 42 U.S.C. § 406(b) of the Social Security Act, Plaintiff's counsel shall refund the smaller award to Plaintiff pursuant to *Weakley v. Bowen*, 803 F.2d 575, 580 (10th Cir. 1986).

IT IS SO ORDERED.

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THE HONORABLE GREGORY J. FOURATT
UNITED STATES MAGISTRATE JUDGE
Presiding by Consent